

under this paragraph (a)(1)(i) shall include the following statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(ii) Where there is no collective bargaining representative, the employer shall, on or within 30 days before the date the labor condition application is filed with ETA, provide a notice of the filing of the labor condition application to its employees by posting a notice in at least two conspicuous locations at each place of employment where any H-1B nonimmigrant will be employed. The notice shall indicate that H-1B nonimmigrants are sought; the number of such nonimmigrants the employer is seeking; the occupational classification; the wages offered; the period of employment; the location(s) at which the H-1B nonimmigrants will be employed; and that the labor condition application is available for public inspection at the employer's principal place of business in the U.S. or at the worksite. The notice shall also include the statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor." The posting of exact copies of the labor condition application shall be sufficient to meet the requirements of this paragraph (a)(1)(ii).

(A) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that the employer's workers at the place(s) of employment can easily see and read the posted notice(s).

(B) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(C) The notices shall be posted on or within 30 days before the date the labor

condition application is filed and shall remain posted for a total of 10 days.

(D) Where the employer places any H-1B nonimmigrant(s) at one or more worksites not contemplated at the time of filing the application, but which are within the area of intended employment listed on the LCA, the employer is required to post notice(s) at such worksite(s) on or before the date any H-1B nonimmigrant begins work, which notice shall remain posted for a total of ten days.

(2) The employer shall, no later than the date the H-1B nonimmigrant reports to work at the place of employment, provide the H-1B nonimmigrant with a copy of the labor condition application certified by the Department.

(b) *Documentation of the fourth labor condition statement.* The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (a) of this section and attested to on form ETA 9035. Such documentation shall include a copy of the dated notice and the name and address of the collective bargaining representative to whom the notice was provided. Where there is no collective bargaining representative, the employer shall note and retain the dates when, and locations where, the notice was posted and shall retain a copy of the posted notice.

(c) *Records retention; records availability.* The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained for the period of time specified in § 655.760(c) of this part. The documentation shall be made available for public examination as required in § 655.760(a) of this part, and shall be made available to DOL upon request.

§ 655.735 Special provisions for short-term placement of H-1B nonimmigrants at place(s) of employment outside the area(s) of intended employment listed on labor condition application.

(a) Subject to the conditions specified in paragraph (b) of this section, an employer may place H-1B nonimmigrant(s) at worksite(s) (place(s) of employment) within areas of employment not listed on the employer's labor condition application(s)—whether or

not the employer owns or controls such worksite(s)—without filing new labor condition application(s) for the area(s) of intended employment which would encompass such worksite(s).

(b) The following restrictions shall be fully satisfied by an employer which places H-1B nonimmigrant(s) at worksite(s) (place(s) of employment) within areas of employment not listed on the employer's labor condition application(s):

(1) The employer has fully satisfied the requirements of §§ 655.730 through 655.734 of this part with regard to worksite(s) located within the area(s) of intended employment listed on the employer's labor condition application(s).

(2) The employer shall not place, assign, lease, or otherwise contract out any H-1B nonimmigrant(s) to any worksite where there is a strike or lockout in the course of a labor dispute in the same occupational classification(s) as the H-1B nonimmigrant(s).

(3) For every day of the H-1B nonimmigrant's(s') placement outside the LCA-listed area of employment, the employer shall pay such worker(s) the required wage (based on the prevailing wage at such worker's(s) permanent work site, or the employer's actual wage, whichever is higher) plus per diem and transportation expenses (for both workdays and non-workdays) at rate(s) no lower than the rate(s) prescribed for Federal Government employees on travel or temporary assignment, as set out in 41 CFR Part 301-7 and Ch. 301, App. A.

(4) The employer's placement(s) of H-1B nonimmigrant(s) at any worksite(s) in an area of employment not listed on the employer's labor condition application(s) shall be limited to a cumulative total of ninety workdays within a three-year period, beginning on the first day on which the employer placed an H-1B nonimmigrant at any worksite within such area of employment. For purposes of this section, "workday" shall mean any day on which one or more H-1B nonimmigrants perform any work at any worksite(s) within the area of employment. For example, one "workday" would be counted for a day on which seven H-1B nonimmigrants worked at three worksites within one city, and one "workday" would be

counted for a day on which one H-1B nonimmigrant worked at one worksite within a city. The employer may rotate such workers into worksites within such area of employment or may maintain a constant work force. However, on the first day after the accumulation of 90 workdays, the employer shall not have any such H-1B nonimmigrant(s) at any worksite(s) within such area of employment not included on a certified LCA.

(c) At the accumulation of the 90 workdays described in paragraph (b)(4) of this section, the employer shall have ended its placement of all H-1B nonimmigrant(s) at any worksite(s) within the area of employment not listed on the labor condition application, *or* shall have filed and received a certified labor condition application for the area(s) of intended employment encompassing such worksite(s) and performed all actions required in connection with such filing(s) (*e.g.*, determination of the prevailing wage; notice to collective bargaining representative or on-site notice to workers).

(d) At any time during the 90-day period described in paragraph (b)(4) of this section, the employer may file a labor condition application for the area of intended employment encompassing such worksite(s), performing all actions required in connection with such labor condition application. Upon certification of such LCA, the employer's obligation to pay Federal per diem rates to the H-1B nonimmigrant(s) shall terminate. (However, see § 655.731(c)(7)(iii)(C) regarding payment of business expenses for employee's travel on employer's business.)

§ 655.740 Labor condition application determinations.

(a) *Actions on labor condition applications submitted for filing.* Once a labor condition application has been received from an employer, a determination shall be made by the ETA regional Certifying Officer whether to certify the labor condition application or return it to the employer not certified.

(1) *Certification of labor condition application.* Where all items on Form ETA 9035 have been completed, the form is not obviously inaccurate, and it contains the signature of the employer or